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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/529,495 | 06/15/2000 | ANDREW FRANCIS KIRBY | 470044.403 | 6663 |

500 7590 01/30/2004

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EXAMINER

EGWIM, KELECHI CHIDI

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1713

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/529,495 | KIRBY ET AL. | |
| | Examiner | Art Unit | |
| | Dr. Kelechi C. Egwim | 1713 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, for reasons stated in the prior Office action.
3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reasons cited in previous actions.

Claim Rejections - 35 USC § 102

4. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kataoka et al. (JP 58'), for reasons cited in previous Office actions.
5. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kataoka et al. (JP 02'), Nabeya et al. or Narayanan et al., for reasons cited in previous Office actions.

Claim Rejections - 35 USC § 103

6. Claims 1-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. for reasons cited in the previous action

Response to Arguments

7. Applicant's arguments filed 11/03/03 have been fully considered but they are not persuasive.

8. Regarding the 112, 1st ¶ rejection, there is no support in the originally filed specification for the new negative limitation wherein the alternating copolymer is not a copolymer of "maleic anhydride and isobutylene". The test for determining compliance with the written description requirement set forth in the first paragraph of §112 regarding new matter remains whether the disclosure of the application, as originally filed, reasonably conveys to an artisan that the inventor had possession at that time of the newly claimed subject matter. In re Kaslow, 707 F.2d 1366, 217 USPQ 1089, 1096 (Fed. Cir. 1983). There is nothing in the originally filed specification that would lead an artisan to understand the alternating copolymer as excluding copolymers of "maleic anhydride and isobutylene". Thus, this newly added limitation is new matter. The applicant has amended the claims to define a new intermediate class of specific "alternating copolymer" which is narrower than the class of "alternating copolymer" embraced by the unqualified term "alternating copolymer", broader than the group of

"alternating copolymer" exemplified in the specification, but not disclosed in the specification as originally filed.

The rejection is maintained.

9. Regarding the 112 rejection 2nd ¶, in all of applicant's arguments, nowhere has applicant pointed out where the relative term "finely divided" is defined in the originally filed specification to give it proper scope. The term is still a relative term and when used in a claim, it renders indefinite how fine/course the principal must be to qualify as "finely divided". None of the literature submitted with applicant's arguments provide a universally acceptable scope for "finely divided" in the art.

10. Regarding the 102(b) over Kataoka et al. (JP 58'), firstly, the literature submitted by applicant merely states that, even though the copolymer of styrene/maleic anhydride is universally known to be alternating, when polymerized at temperatures above 90°C, the copolymer becomes "increasingly random". Contrary to applicant's assertions, the document does not teach the copolymer to be definitively random, even at the temperature exemplified in Kataoka et al. The styrene/maleic anhydride copolymer need only be substantially alternating to be considered alternating (see applicant's own claim 4). While it is known that styrene/maleic anhydride copolymer is characteristically alternating (See US 3,864,319) and Kataoka et al. teach the polymer to be increasingly random above 90°C, Kataoka et al. never teaches the copolymers to be

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characteristically random. The styrene/maleic anhydride copolymers of Kataoka et al. are still understood to be substantially alternating.

11. Regarding Kataoka et al. (JP 02') and Nabeya et al. that teach the styrene/maleic anhydride copolymer, it is known that styrene/maleic anhydride copolymer is characteristically alternating (See US 3,864,319).

12. Further, as stated above, there is no support in the originally filed specification for expressly excluding the isobutylene/maleic anhydride copolymer, which is **also** taught by Kataoka et al. (JP 58'), Kataoka et al. (JP 02') and Nabeya et al.

13. Regarding the arguments against the rejection based on Narayanan et al., contrary to the suggestion by applicant, by definition, an emulsion **is** a dispersion.

14. Regarding the solid character of the agrochemical principals in Narayanan et al., a "liquid" is not a low melting point solid. A low melting point solid is still solid at ambient temperature; this is well accepted. Narayanan et al. teaches the solid, be it one with a low melting point. Low melting point solids are not excluded from the solids in applicant's claims. Narayanan et al. teaches each element of applicant method as claimed.

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15. In response to applicant's arguments against Robinson, applicant claims are read a broadly as practicable. Applicant admits that all emulsifiers are dispersants. As such, the "emulsifiers" of Robinson meet the requirements for a dispersant. Thus, the requirements for rejection under 35 U.S.C. 103(a) are met.

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (703) 306-5701. The examiner can normally be reached on M-T (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703) 308-2450. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.



KELECHI C. EKWUN PH.D.
PRIMARY EXAMINER

KCE